CF0000061279

CA 1970/97 (2)

APPEAL PRISONER S.T. No- 271

No. 712 Name पूरन यादव रतन

Father's Name रतन यादव Resident केशरपाल थाना-भानपुरी जिला - बस्तर म०प्र०

Age 35 वर्ष Sentenced to आजीवन कारावास on 26-5-97

Under Section 302 भा०दं०वि० by सत्र न्यायालय जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No -
2. Date of which copy received :- 26-5-97
3. Date on which appeal sent :- 31-5-97
4. Whether the prisoner wished to be represented or not :- Yes / ~~No~~.

No. 712 Name पूरन यादव S/o रतन यादव

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 665/अपराध / Dated 31-5-97

Forwarded to the CHIEF JUDICIAL MAGISTRATE JAGDALPUR together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

अधीक्षक
Superintendent ~~Central~~ / Distt / Sub-Jail.
जगदलपुर

Date of receipt in C. J. M. Office. 13.6.97

Date of receipt of record to accompany. -

Memo of Appeal of the Appellate Court. -

No. 11(1) dated 18/6/97

Forwarded to the Hble Sessions Judge Jagdalpur

C. R. MAGISTRATE 18-6-97

Date of receipt in Applieate Court

XI-HC-22

(12)
(11)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1970/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1970 of 1997

Appellant : Pooran Rawat

Vs.

Respondent : State of Madhya Pradesh

Ms. Sofiya Khan, learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. for the State/respondent.

ORAL JUDGMENT
(05.04.2006)

Per L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 26th May 1997 passed by learned Sessions Judge, Bastar in S.T. No. 271/96 whereby the learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC sentenced him to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that there was a dispute between deceased Cheruram and the accused regarding partition of land. On 02.05.1996 the deceased went to the house of the accused and asked for his share of land, on which quarrel started between the two. The deceased was bent upon to assault the accused whereupon the accused assaulted the deceased with club. Report (Ex.P-8) of the matter was

[पीछे देखिये

(13)
(12)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1970/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

lodged by PW-1 Aayturam – the village Kotwar. The Investigating Officer after registering the crime took up the investigation and left for the scene of occurrence. After giving notice to the Panchas he prepared the Panchanama (Ex.P-1) of the body of deceased Cheruram. The Investigating Officer took into possession bloodstained soil, plain soil, one lungi and one Riko watch under Ex.P-2. Club – the weapon of offence was taken into possession under Ex.P-3. Lungi of the accused was taken into possession under Ex.P-4 and clothes of the deceased were taken into possession under Ex.P-5. The seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where report (Ex.P-11) was received. The dead body of Cheruram was sent for postmortem examination to Govt. Hospital, Bhanpuri under Ex.P-10 where Dr. K.S. Paikra (PW-5) conducted the postmortem and prepared the postmortem report (Ex.P-10). After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Jagdalpur who in turn committed the case to the Sessions Judge, Jagdalpur for trial.

3. Prosecution in order to establish the charge against the accused/appellant examined six witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime. Learned Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph – 1 of this judgment.

[पीछे देखिये

(14)
(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A 1920/97 सन् 200—

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. We have heard Ms. Sofiya Khan, learned counsel appearing on behalf of the accused/appellant and Shri U.N.S. Deo, learned G.A. for the State.

5. Homicidal death of deceased Cheruram is not in dispute.

6. As far as involvement of the accused/appellant in the commission of crime in question is concerned, even though PW-4 Subli Bai – wife of the deceased has been examined as eyewitness but in her cross-examination she has stated that at the time of incident she was not present at the place of occurrence, therefore, her evidence has rightly been rejected by the trial Court. Thus the whole case of the prosecution rests on circumstantial evidence i.e. extra judicial confession made by the accused before PW-1 Aayturam and PW- 3 Sukman. In order to rest the conviction on extra judicial confession, the Court is required to ascertain as to whether the extra judicial confession made by the accused was voluntary and ~~prompt~~ natural? PW-1 Aayturam has stated that in the fateful night at about 10.00 p.m. when he along with Sukman were returning to their house after performing election duty, accused Pooran met them on the way near his house and disclosed to them that he has murdered Cheruram by attacking with club and body of Cheruram was lying in the kitchen garden of Kurso. Thereupon, he disclosed this fact to others and all of them went there and saw that dead body of Cheruram was lying there and there was injury on the head. In paragraph – 2 of his evidence he has further stated that there was a dispute between the accused and the deceased regarding the land. In the cross-examination he has stated that the accused at the time of making extra judicial confession had stated that he has killed the deceased as there was a dispute between the

[पीछे देखिये

(15)
(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1970/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased and himself regarding the land and he was demanding his share of land from the deceased which was denied by the deceased, on which quarrel took place and they abused each other. PW-3 Sukman has corroborated the above evidence and in the cross-examination he has stated that the accused disclosed to them that as the deceased was abusing him, he attacked with club and murdered him. Thus from the above evidence it is established that the accused attacked the deceased with club on his head as a result of which he received four injuries which have been proved by Dr. K.S.Paikra (PW-5) and succumbed to the same. These two witnesses (PW-1 & PW-3) are independent witnesses and there was no reason before them to falsely implicate the accused and that too, in a heinous offence like murder. Therefore, the evidence of these two witnesses inspire confidence that the accused made extra judicial confession before them regarding attacking the deceased with club and thereby causing his death.

7. Learned counsel for the accuse/appellant argued that there is no medical evidence to show that the injuries inflicted on the head of the deceased were sufficient in the ordinary course of nature to cause his death. She further argued that as per the evidence available on record there was a dispute between the accused and the deceased regarding share of land and in that dispute on the spur of moment, in the heat of passion, without premeditation the accused assaulted the deceased, therefore, offence against the accused does not travel beyond Section 304-II of the IPC.

8. On the other hand, Shri U.N.S. Deo, learned G.A. for the State supported the impugned judgment of the trial Court.

[पीछे देखिये

XI-HC-22

(16)
(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr A. 1970/99 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. Perusal of the evidence adduced by the prosecution goes to show that there was a dispute between the accused and the deceased regarding share of land and according to the evidence of PW-3 Sukman the accused disclosed to him that as the deceased started abusing, he assaulted him with club and murdered him. PW-1 Aayturam has also stated that accused disclosed to him that he has killed Cheruram as he was demanding his share of land from the deceased which was refused by the deceased, on which quarrel started between the two and they abused each other. Therefore, from the above evidence it is evident that when the accused was discussing with the deceased about his share of land, the deceased abused him on which quarrel ensued and in that quarrel in the spur of moment, all of a sudden, in the heat of passion, without premeditation the accused assaulted the deceased with club on his head, as a result of which deceased received frontal bone fracture injury and died due to coma on account of head injury as the brain material was suppressed. Though from the statement of doctor it has not come in evidence that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death but from the fact mentioned above it can safely be inferred that while assaulting the deceased with club, the accused had knowledge that by causing injury on the head with club, he may likely to cause death of the deceased. Therefore, the offence against the accused is made out under Section 304-II of the IPC and as such the finding of the trial Court convicting the accused under Section 302 of the IPC cannot be sustained.

[पीछे देखिये

XI-HC-22

17
16

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 1970/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10. In the result, the appeal partly succeeds. Conviction and sentence imposed under Section 302 of the IPC upon the accused/appellant by the trial Court, are set aside instead thereof he is convicted under Section 304-II of the IPC and sentenced to undergo imprisonment for ten years. The accused/appellant is stated to be in custody since 03.05.1996 which is not disputed by learned counsel for the State. Therefore, the accused/appellant be released on completion of the sentence if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Khan

[पीछे देखिये